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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CALIFORNIA INSURANCE COMPANY, a
New Mexico Corporation,

Plaintiff,

v.

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA RICARDO
LARA, in his official capacity;
CALIFORNIA DEPARTMENT OF
INSURANCE DEPUTY COMMISSIONER
KENNETH SCHNOLL, in his official
capacity; CALIFORNIA DEPARTMENT
OF INSURANCE DEPUTY COMMISSIONER
BRYANT HENLEY, in his official
capacity; and DOES 1-20,

Defendants.

No. 2:21-cv-00030 WBS AC

ORDER RE: DEFENDANTS' MOTION
TO DISMISS

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On March 31, 2021, this court dismissed a lawsuit
brought by affiliates of California Insurance Company ("CIC")--a
California-domesticated workers compensation insurance carrier--
which sought the intervention of this court to effectively halt
the currently-pending conservation of CIC in San Mateo Superior

1 Court. See Applied Underwriters, Inc. v. Lara, No. 2:20-cv-02096
2 WBS AC, ___ F. Supp. 3d ___, 2021 WL 1212674, at *14 (E.D. Cal.
3 Mar. 31, 2021). The court held that it lacked jurisdiction over
4 the Applied Underwriters action based on the prior exclusive
5 jurisdiction doctrine and Younger abstention doctrine.¹ See id.
6 at **7, 17 (citing Younger v. Harris, 401 U.S. 37 (1971)).

7 This action is the second collateral attack brought by
8 an affiliate of CIC against the ongoing state conservation
9 proceeding. (See First Amended Compl. ("FAC") ¶¶ 24, 30, 63
10 (Docket No. 30).) In all material respects, this action is
11 identical to the action the court dismissed in its March 31
12 order. The plaintiff in this action, California Insurance
13 Company, a New Mexico Corporation ("CIC II"), is the shell
14 company owned and formed by the owner of CIC to effectuate the
15 transfer of CIC's assets to New Mexico. See (id.); Applied
16 Underwriters, 2021 WL 1212674, at *2. CIC II is owned and
17 controlled by the same individual (Steven Menzies) who serves as
18 the President, Treasurer, and Director of the Applied
19 Underwriters plaintiffs, and is represented by the same counsel
20 as the Applied Underwriters plaintiffs. See (FAC ¶ 24); Applied
21 Underwriters, 2021 WL 1212674, at *1. CIC II's claims are nearly
22 identical to those of the Applied Underwriters plaintiffs: CIC
23 alleges that the same defendants--California Department Insurance
24 ("CDI") officers Ricardo Lara, Kenneth Schnoll, and Bryant
25 Henley, named in their official capacities--violated its rights

26 ¹ The Applied Underwriters plaintiffs appealed the
27 court's decision to dismiss their claims to the Ninth Circuit.
28 (See Case No. 2:20-cv-2096-WBS-AC, Docket Nos. 58-60.) As of the
date of this order, their appeal is still pending.

1 under the U.S. Constitution based on the same alleged conduct set
2 forth in the Applied Underwriters complaint. (Compare FAC ¶¶ 36-
3 133 with First Amended Compl. ¶¶ 38-134 ("Applied Underwriters
4 FAC") (Case No. 2:20-cv-2096-WBS-AC, Docket No. 26).)

5 Crucially, CIC II seeks essentially the same relief in
6 this case as that sought in Applied Underwriters--a federal court
7 order interfering with and potentially terminating the state
8 conservation proceeding. CIC II's First Amended Complaint seeks
9 an "Order directing defendants to take all necessary steps to
10 prevent further harm to plaintiff." (FAC Prayer for Relief ¶ E.)
11 While this request is certainly broader and more vague than the
12 plaintiffs' request in Applied Underwriters,² CIC II specifically
13 alleges that it is "entitled to injunctive relief enjoining
14 defendants from continuing the Commissioner's bad-faith
15 conservatorship." (FAC ¶ 171.) Because CIC II also alleges that
16 "the ongoing conservatorship has damaged and will continue to
17 impose irreparable damage to CIC's"--and therefore CIC II's--
18 "goodwill and credit" (FAC ¶ 126), injunctive relief directing
19 defendants to "take all necessary steps to prevent further harm"
20 (FAC Prayer for Relief ¶ E) would necessarily entail ending the
21 conservation.

22 Even the declaratory relief CIC II seeks would result

23
24 ² The Applied Underwriters plaintiffs' original complaint
25 sought "[a]n Order vacating the Commissioner's conservatorship of
26 CIC" and "enjoining the Commissioner from continuing to hold CIC
27 under conservation." Applied Underwriters, 2021 WL 1212674, at
28 *3. After amending their complaint, the plaintiffs sought "[a]n
Order directing the Commissioner to take all necessary steps to
end CIC's conservatorship pursuant to California Insurance Code
§ 1012, and enjoining the Commissioner from continuing the
conservation." (Applied Underwriters FAC Prayer for Relief ¶ C).

1 in the same interference with and disruption of state proceedings
2 that led the court to dismiss plaintiffs' claims in Applied
3 Underwriters. See Applied Underwriters, 2021 WL 1212674, at **7,
4 *14 n.7. CIC II asks the court to declare unconstitutional, and
5 thus invalid, the bases of the conservation and the proposed
6 rehabilitation plan. (See FAC Prayer for Relief ¶¶ A-D; Pl.'s
7 Opp'n at 92 (Docket No. 39-1) (stating that CIC II seeks
8 declarations that "multiple actions, including elements of
9 defendants' [proposed rehabilitation] plan" are
10 unconstitutional).) Declaring defendants' actions and proposed
11 rehabilitation plan to be unconstitutional would have the same
12 practical effect as injunctive relief directing defendants to
13 take all necessary steps to terminate the conservation. See
14 Gilbertson v. Albright, 381 F.3d 965, 971 (9th Cir. 2004)
15 ("ordinarily a declaratory judgment will result in the precisely
16 the same interference with and disruption of state proceedings
17 that the longstanding policy of limiting injunctions [under
18 Younger] was designed to avoid"). Artful pleading cannot conceal
19 the fact that the gravamen of this action, like the Applied
20 Underwriters action, is to interfere with, and even terminate,
21 the ongoing state conservation proceeding involving CIC. See
22 Applied Underwriters, 2021 WL 1212674, at *7.

23 Because this case involves the same underlying state
24 court proceeding as Applied Underwriters, and similarly seeks to
25 interfere with, or even terminate, that proceeding, the court
26 concludes that dismissal is warranted under the prior exclusive
27 jurisdiction doctrine for the same reasons articulated in the
28 court's prior order. See id. at **4-7.

1 The court further concludes that Younger abstention is
2 also appropriate in this case. As the court explained in Applied
3 Underwriters, abstention under Younger v. Harris is warranted
4 when a federal court is asked to intervene in or enjoin an
5 ongoing state proceeding which falls into one of three
6 categories: criminal prosecutions, certain civil enforcement
7 proceedings, and "civil proceedings involving certain orders that
8 are uniquely in furtherance of the state courts' ability to
9 perform their judicial functions." New Orleans Pub. Serv., Inc.
10 v. Council of City of New Orleans, 491 U.S. 350, 367-68 (1989)
11 ("NOPSI"). Once the court is satisfied that the case falls into
12 one of the three NOPSI categories, the court must further
13 conclude that the three Middlesex factors are met: the
14 conservation must be (1) ongoing, (2) "implicate important state
15 interests," and (3) there must be "an adequate opportunity in the
16 state proceedings to raise constitutional challenges."
17 Readylink Healthcare, Inc. v. State Compensation Ins. Fund, 754
18 F.3d 754, 759 (9th Cir. 2014) (quoting Middlesex Cnty. Ethics
19 Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)).
20 Finally, the court must evaluate whether the established
21 exceptions to Younger for "bad faith, harassment, or any other
22 unusual circumstance that would call for equitable relief" are
23 not present. Younger, 401 U.S. at 45.

24 The court will explain in greater detail below why the
25 above-listed factors apply with equal force to CIC II's case as
26 they did to the plaintiffs' case in Applied Underwriters. First,
27 however, the court will address a point raised by CIC II's
28 counsel at oral argument: that abstention in this case would be

1 particularly inappropriate given the fact that CIC II's claims
2 arise under 42 U.S.C. § 1983. Counsel argued that denying CIC II
3 a federal forum to raise its claims that state officers
4 instituted the underlying state proceedings in violation of its
5 federal constitutional rights would be inconsistent with § 1983's
6 purpose: "to interpose the federal courts between the States and
7 the people, as guardians of the people's federal rights--to
8 protect the people from unconstitutional action under the color
9 of state law, 'whether that action be executive, legislative, or
10 judicial.'" Mitchum v. Foster, 407 U.S. 225, 240 (1972) (quoting
11 Ex Parte Virginia, 100 U.S. 339, 346 (1879)).

12 CIC II correctly points out that § 1983 empowers
13 federal courts to enjoin ongoing state judicial proceedings if
14 necessary to prevent great, immediate, and irreparable loss of a
15 person's constitutional rights. See Ex Parte Young, 209 U.S.
16 123, 167 (1908); Mitchum, 407 U.S. at 242-43. The Supreme Court
17 has noted, however, that this power does not "question or qualify
18 in any way the principles of equity, comity, and federalism
19 [underlying Younger] that must restrain a federal court when
20 asked to enjoin a state court proceeding." Id. at 243. When
21 Congress enacted § 1983, it was moved by a concern that "state
22 courts were being used to harass and injure individuals, either
23 because the state courts were powerless to stop deprivations or
24 were in league with those who were bent upon abrogation of
25 federally protected rights." Id. at 240 (emphasis added).
26 Consistent with this concern, the Supreme Court has expressly and
27 repeatedly held that Younger abstention is not appropriate where
28 the federal plaintiff has shown that "state procedural law barred

1 presentation of [its federal] claims," Pennzoil Co. v. Texaco,
2 Inc., 481 U.S. 1, 15 (1987), or that the "state proceeding is
3 motivated by a desire to harass or is conducted in bad faith."
4 Juidice v. Vail, 430 U.S. 327, 338 (1977). Absent some evidence
5 that the state court will be unable or unwilling to vindicate the
6 federal plaintiff's constitutional rights, however, the Supreme
7 Court has instructed that "the normal thing to do when federal
8 courts are asked to enjoin pending proceedings in state courts is
9 not to issue such injunctions." Ohio Civil Rights Comm'n v.
10 Dayton Christian Schools, Inc., 477 U.S. 619, 627 (1986) (quoting
11 Younger, 401 U.S. at 45).

12 As the following analysis shows, CIC II has failed to
13 establish that the ongoing state proceeding is inadequate to hear
14 its federal constitutional claims, whether because it will bar
15 presentation of the claims or because the court is proceeding in
16 bad faith. Accordingly, the court rejects CIC II's contention
17 that abstention is inappropriate given the nature of its claims
18 under § 1983.

19 A. Whether the conservation is a Civil Enforcement
20 Proceeding under NOPSI

21 The Supreme Court has indicated that, while not every
22 civil enforcement proceeding warrants Younger abstention, the
23 type of civil enforcement proceedings from which the court must
24 abstain are "'akin to a criminal prosecution' in 'important
25 respects.'" Sprint Comms., Inc. v. Jacobs, 571 U.S. 69, 79
26 (2013) (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604
27 (1975)). While the Court has not "prescribe[ed] criteria that
28 are always required," it has "described the characteristics of

1 [these] quasi-criminal enforcement actions in general terms by
2 noting features that are typically present." Bristol-Myers
3 Squibb Co. v. Connors, 979 F.3d 732, 735-36 (9th Cir. 2020).

4 Such characteristics include that the enforcement action was

5 initiated to sanction the federal plaintiff,
6 i.e., the party challenging the state
7 action, for some wrongful act. In cases of
8 this genre, a state actor is routinely a
9 party to the state proceeding and often
10 initiates the action. Investigations are
11 commonly involved, often culminating in the
12 filing of a formal complaint or charges.

13 Id. (quoting Sprint, 571 U.S. at 79 (citations omitted)).

14 Because this case involves the same underlying
15 conservation proceeding as Applied Underwriters, the court's
16 conclusion that the conservation qualifies as the type of civil
17 enforcement proceeding from which the court must abstain applies
18 here with equal force. See Applied Underwriters, 2021 WL
19 1212674, at **8-9. As the court previously described, California
20 Insurance Code § 1011 authorizes the State's Insurance
21 Commissioner, "acting under and within [the State's] police
22 power," Carpenter v. Pac. Mut. Life Ins. Co. of Cal., 10 Cal. 2d
23 307, 331 (Cal. 1937), to commence conservation proceedings if an
24 insurer has conducted one or more actions set forth by statute:
25 if the insurer "has violated its charter or any law of the
26 state," Cal. Ins. Code § 1011(e), if an "officer or attorney in
27 fact of the [insurer] has embezzled, sequestered, or wrongfully
28 diverted any of the assets of the [insurer]," id. at § 1011(g),
if the insurer has not "compl[ied] with the requirements for the
issuance to it of a certificate of authority," id. at § 1011(h),
if the insurer, "without first obtaining the consent in writing

1 of the commissioner, has transferred, or attempted to transfer,
2 substantially its entire property or business or, without
3 consent, has entered into any transaction the effect of which is
4 to merge, consolidate, or reinsure substantially its entire
5 property or business in or with the property or business of any
6 other person," id. at § 1011(c), if the insurer is found to be in
7 a "condition that makes its further transaction of business
8 hazardous to its policyholders," id. at § 1011(d), or if the
9 insurer is found to be insolvent, id. at § 1011(i).

10 Section 1011 therefore provides the Commissioner with a
11 tool to enforce various provisions of the Insurance Code on
12 behalf of the State, and to protect the public once he determines
13 that an insurer has committed a "wrongful" or harmful act, as set
14 forth by statute. See Cal. Ins. Code § 1011; (Def.'s Req. for
15 Judicial Notice ("Def.'s RJN"), Ex. 4, Superior Court's Order
16 Denying CIC's Application to Vacate the Conservation Order, at 4
17 ("The Legislature has given the Commissioner the discretion to
18 deal with this case under either section 1011 or section 1215.2
19 and the choice of enforcement tool is [his] to make." (emphasis
20 added)) (Docket No. 34)).³ Some of § 1011's authorizing
21 provisions are "in aid of and closely related to criminal
22 statutes," Herrera v. City of Palmdale, 918 F.3d 1037, 1044 (9th
23 Cir. 2019), including Insurance Code § 1633, which provides for
24 criminal penalties for any person who transacts insurance without
25

26 ³ The court takes judicial notice of Exhibits 4-8 of
27 defendants' Request for Judicial Notice, which consist of filings
28 in the San Mateo County Superior Court, on the ground that they
are public records not subject to reasonable dispute. See
Harris v. Cnty. of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012).

1 a valid license. See Cal. Ins. Code § 1633.

2 Further, only the Commissioner may institute a
3 conservation--the statute does not provide for enforcement by
4 private citizens. See Sprint, 571 U.S. at 80 (holding that
5 Younger did not apply because "a private corporation, Sprint,
6 initiated the action . . . no state authority conducted an
7 investigation into Sprint's activities"); ReadyLink Healthcare,
8 Inc. v. State Compensation Ins. Fund, 754 F.3d 754, 760 (9th Cir.
9 2014) (holding that Younger did not apply to state court
10 proceedings because the proceedings involved a dispute between
11 private parties, which was adjudicated by a state officer). To
12 do so, the Commissioner must file a verified application with the
13 Superior Court showing that any of the conditions set out in
14 § 1011 exist--akin to a "formal complaint or charges"--which
15 often comes as the result of an investigation by the Commissioner
16 or his office. See Sprint, 571 U.S. at 79-80. Upon making such
17 a showing, the Commissioner may obtain from the Superior Court an
18 order which sanctions the insurer by "vesting title to all the
19 assets" of the insurer in the Commissioner and "enjoining the
20 [insurer] and its officers, directors, agents, servants, and
21 employees from the transaction of its business or disposition of
22 its property." Cal. Ins. Code § 1011; see Sprint, 571 U.S. at 80
23 n.6 (rejecting distinction between "coercive" and "remedial"
24 sanctions due to the ease of manipulation in designation of the
25 two categories). California conservation proceedings therefore
26 resemble criminal prosecutions in each of the "important
27 respects" discussed by the Supreme Court in Sprint and its
28 progeny.

1 Plaintiff's argument that California conservation
2 proceedings are not akin to criminal prosecutions because they
3 have "historically been used to rehabilitate or liquidate
4 companies that are insolvent or confronting a risk of insolvency"
5 does not alter this conclusion. (See Pl.'s Opp'n at 73 (Docket
6 No. 39-1).) First, when determining whether a state enforcement
7 action exhibits the characteristics of criminal enforcement
8 actions for purposes of Younger abstention is required, the court
9 must take a categorical approach, rather than "scrutinize[ing]
10 the particular facts" of individual proceedings. See Bristol-
11 Myers Squibb, 979 F.3d at 737 ("What matters for Younger
12 abstention is whether the state proceeding falls within the
13 general class of quasi-criminal enforcement actions--not whether
14 the proceeding satisfies specific factual criteria."). The plain
15 language of § 1011 indicates that a conservation may be initiated
16 for a number of reasons unrelated to financial solvency. See
17 Cal. Ins. Code § 1011. These may include violations of
18 California law or the insurer's own charter, Cal. Ins. Code
19 § 1011(e), attempts to merge with another insurer without the
20 written consent of the Commissioner, id. at § 1011(c), or failure
21 to comply with the requirements for the issuance of a certificate
22 of authority or if a certificate of authority has been revoked,
23 id. at § 1011(h).

24 Second, even the provisions of § 1011 authorizing a
25 conservation based on the financial health of an insurer are
26 inextricably linked to California laws requiring adequate
27 capitalization, reserves, and other mandates governing the
28 company's relationship to its policyholders, and thus function as

1 a tool to sanction insurers for wrongful conduct. See, e.g.,
2 Cal. Ins. Code § 923.5 (“Each insurer transacting business in
3 this state shall at all times maintain reserves in an amount
4 estimated in the aggregate to provide for the payment of all
5 losses and claims for which the insurer may be liable”).

6 Because the underlying conservation proceeding exhibits
7 the general characteristics of the type of civil enforcement
8 proceeding for which abstention is warranted, and because CIC II
9 has not provided the court with any basis upon which to
10 distinguish this case, the court re-affirms its conclusion from
11 Applied Underwriters that the ongoing conservation proceeding
12 falls within the second NOPSI category for civil enforcement
13 proceedings. See NOPSI, 491 U.S. at 367-68.

14 B. Whether the Middlesex Factors are Satisfied

15 As was the case in Applied Underwriters, CIC II does
16 not dispute that the underlying state proceeding is still
17 ongoing, and thus that the first Middlesex factor is met. See
18 Applied Underwriters, 2021 WL 1212674, at *11. Additionally,
19 because the state is in the same enforcement posture as it was in
20 Applied Underwriters, the court concludes that the state’s
21 interest in enforcing its insurance laws again satisfies the
22 second Middlesex factor. See id. at **11-12.

23 As to the third factor, the court again concludes that
24 the conservation proceeding will provide CIC II with a sufficient
25 forum for raising its federal constitutional challenges. See id.
26 at **12-14. The inquiry for the court is whether “state law
27 clearly bars the interposition of the constitutional claims.”
28 Lebbos v. Judges of Superior Court, 883 F.2d 810, 815 (9th Cir.

1 1989) (quoting Middlesex, 457 U.S. at 432). This factor “does
2 not turn on whether the federal plaintiff actually avails himself
3 of the opportunity to present federal constitutional claims in
4 the state proceeding, but rather whether such an opportunity
5 exists.” Herrera, 918 F.3d at 1046; Canatella v. Cal., 404 F.3d
6 1106, 1111 (9th Cir. 2005). “[T]he burden on this point rests on
7 the federal plaintiff to show ‘that state procedural law barred
8 presentation of [its] claims.’” Pennzoil, 481 U.S. at 14 (1987).

9 In Applied Underwriters, the plaintiffs argued that the
10 third Middlesex factor was not met because they were not parties
11 to the ongoing conservation, and thus could not influence the
12 proceeding or present their constitutional arguments to the state
13 court. See Applied Underwriters, 2021 WL 1212674, at *12. The
14 court rejected this argument because, as close affiliates of CIC,
15 the plaintiffs had been expressly invited by the Superior Court
16 to submit any objections--constitutional or otherwise--that they
17 had to the proposed rehabilitation plan in writing and orally at
18 the court’s hearing on the Commissioner’s application to approve
19 the plan. See id. Further, the court found that CIC would be
20 able to adequately represent the plaintiffs in the conservation
21 because it was controlled by the same individuals as the
22 plaintiffs, and because all of the plaintiffs’ alleged injuries
23 ultimately stemmed from the same conservation order and proposed
24 rehabilitation plan that the Commissioner sought to impose on
25 CIC. See id. at *13.

26 CIC II does not seriously dispute that it will be able
27 to influence the ongoing conservation proceeding in the same
28 manner as the Applied Underwriters plaintiffs. (See Pl.’s Opp’n

1 at 85-92.) CIC II is also a close affiliate of CIC, and is
2 subject to the same management and control; CIC II has therefore
3 also been expressly invited by the Superior Court to participate
4 in the proceeding, and will have its interests adequately
5 represented by CIC, given that all of its alleged injuries stem
6 from the harm the conservation has allegedly done to CIC. See
7 id.

8 The same considerations articulated by the court in
9 Applied Underwriters regarding the ability of CIC II to present
10 its constitutional claims to the Superior Court therefore govern
11 in this case. As the court previously explained, "California
12 case law shows that constitutional objections may be raised in a
13 motion to lift the conservation, in conjunction with the Superior
14 Court's review of the proposed rehabilitation plan, or on
15 subsequent appeals from decisions of the Superior Court." Id. at
16 **13-14 (citing Carpenter, 10 Cal. 2d at 328-29; In re Exec. Life
17 Ins. Co., 32 Cal. App. 4th 344, 391 (2d Dist. 1995); Rhode Island
18 Ins. Co. v. Downey, 95 Cal. App. 2d 220, 238 (1st Dist. 1949)).
19 The Superior Court has already heard and denied an application
20 filed on behalf of CIC and CIC II to vacate the conservation, the
21 California Court of Appeal has already heard and denied CIC's
22 application for interlocutory review, and, as noted above, CIC II
23 has been expressly invited by the Superior Court to present its
24 objections to the proposed rehabilitation plan as part of the
25 court's consideration of whether to approve the plan. See id. at
26 14. Additionally, since the court issued its March 31 order, the
27 Superior Court has heard a request to conduct discovery filed by
28 attorneys representing CIC and CIC II, and authorized the

1 requested discovery. (See Def.'s RJN, Exs. 6-7.)

2 As the conservation progresses, CIC II "will be free to
3 pursue interlocutory review of the Superior Court's orders
4 through emergency writ . . . or other appellate review of the
5 Superior Court's decisions within the California court system
6 and, ultimately, the United States Supreme Court." Id.; see also
7 Huffman v. Pursue, Ltd., 420 U.S. 592, 605 (1975) ("A civil
8 litigant may, of course, seek review in [the U.S. Supreme Court]
9 of any federal claim properly asserted in and rejected by state
10 courts."). This court therefore again concludes that the
11 conservation has and will continue to provide an adequate
12 opportunity to raise federal constitutional challenges.⁴ See
13 Middlesex, 457 U.S. at 437. If anything, the fact that the
14 Superior Court has permitted CIC to conduct discovery regarding
15 the grounds for the conservation, as well as the process utilized
16 by defendants to develop the proposed rehabilitation plan, in
17 advance of the hearing on the plan only bolsters the court's
18 conclusion that Younger abstention is appropriate in order to
19 "give [the] state[] the first opportunity--but not the only, or
20 last--to correct those errors of a federal constitutional
21 dimension that infect its proceedings." Applied Underwriters,
22 2021 WL 1212674, at *16 n.8 (quoting Diamond "D" Const. Corp. v.

23
24 ⁴ The Ninth Circuit has articulated an "implied fourth
25 requirement that the federal court action would enjoin the
26 proceeding, or have the practical effect of doing so." Potrero
27 Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876, 882 (9th
28 Cir. 2011). For the reasons articulated above that CIC II's
requested relief would have the practical impact interfering with
and potentially terminating the state conservation proceeding,
the court finds that this implied requirement is met here.

1 McGowan, 282 F.3d 191, 200 (2d Cir. 2002)).

2 C. Younger Exceptions for "Bad Faith" and "Irreparable
3 Injury"

4 Even if all the requirements for Younger abstention
5 have been met, the Supreme Court has stated that a federal court
6 must nevertheless intervene in a state proceeding upon a showing
7 of "bad faith, harassment, or any other unusual circumstance that
8 would call for equitable relief." See Younger, 401 U.S. at 45.
9 "A plaintiff who seeks to head off Younger abstention bears the
10 burden of establishing that one of the exceptions applies."
11 Diamond "D", 282 F.3d at 198 (citations omitted).

12 1. Bad Faith

13 As the court noted in Applied Underwriters, the "bad
14 faith" exception to Younger abstention is narrow: "[o]nly in
15 cases of proven harassment or prosecutions undertaken by
16 officials in bad faith without hope of obtaining a valid
17 conviction ... is federal injunctive relief against pending state
18 prosecutions appropriate." Perez v. Ledesma, 401 U.S. 82, 85
19 (1971) (emphasis added). Accordingly, "[t]here is no case since
20 Younger was decided in which the [Supreme] Court has found that
21 the exception for bad faith or harassment was applicable."
22 Wright & Miller, 17B Fed. Prac. & Proc. Juris. § 4255 (3d ed.).

23 CIC II does not provide any factual basis upon which
24 to distinguish the court's analysis of whether bad faith applies
25 from the analysis it provided in Applied Underwriters. CIC II's
26 complaint is based on the same alleged actions of the
27 Commissioner, which CIC II again argues were performed in bad
28 faith and in retaliation for CIC's exercise of its constitutional

1 rights. (See Def.'s Opp'n at 94-102); Applied Underwriters, 2021
2 WL 1212674, at *15.

3 CIC II's complaint therefore suffers from the same
4 defect identified in the court's prior order: while CIC II
5 alleges that the Commissioner acted in bad faith in pursuing the
6 underlying conservation, it does not allege that the state court
7 has acted in bad faith or "in league," Mitchum, 407 U.S. at 242-
8 43, with defendants to deprive it of its federal constitutional
9 rights. See Juidice, 430 U.S. at 338. Nor does CIC II allege
10 that the Commissioner has defied state judicial orders or acted
11 in a way that would indicate that the state court is "powerless"
12 to stop the Commissioner from acting unconstitutionally. See
13 generally (FAC); Younger, 401 U.S. at 47-48 (citing Dombrowski v.
14 Pfister, 380 U.S. 479 (1965) for the proposition that defiance of
15 state court orders by prosecutor would indicate bad faith such
16 that abstention would not be warranted).

17 To the contrary, the Commissioner has received judicial
18 authorization before acting from the Superior Court or California
19 Court of Appeal--which, again, CIC does not allege have
20 themselves acted in bad faith--at every turn. See Applied
21 Underwriters, 2021 WL 1212674, at *15 (noting that the Superior
22 Court reviewed the Commissioner's application for an order
23 appointing him conservator of CIC, affirmed its decision to
24 impose the conservation by denying CIC's motion to vacate the
25 conservation, and issued a procedural order after the
26 Commissioner represented that "a rehabilitation plan may well
27 result in CIC ceasing to do business in California," and that the
28 California Court of Appeal denied CIC's writ petition for

1 immediate review). This case is therefore akin to cases in which
2 the Supreme Court has held that the bad faith exception to
3 Younger does not apply. In Juidice, for instance, the Supreme
4 Court held that Younger abstention was appropriate in a case
5 challenging the constitutionality of New York's statutory
6 contempt procedures because, while the federal plaintiff had
7 alleged that the other parties to the state contempt proceeding
8 had been motivated by bad faith, "there [were] no comparable
9 allegations with respect to appellant justices who issued the
10 contempt orders." Juidice, 430 U.S. at 338. Similarly, in Hicks
11 v. Miranda, the Supreme Court reversed a district court's finding
12 of bad faith where the federal defendants had repeatedly relied
13 on valid judicial warrants prior to seizing evidence. See 422
14 U.S. 332, 351 (1975) ("Absent at least some effort by the
15 District Court to impeach the entitlement of the prosecuting
16 officials to rely on repeated judicial authorization for their
17 conduct, we cannot agree that bad faith and harassment were made
18 out.").

19 The court therefore concludes that the bad faith
20 exception to Younger abstention does not apply.

21 2. Irreparable Injury

22 Nor does this case satisfy the second Younger exception
23 for irreparable injury. In cases where a federal court is asked
24 to enjoin an ongoing state prosecution, the Supreme Court has
25 "stressed the importance of showing irreparable injury, the
26 traditional prerequisite to obtaining an injunction." Younger,
27 401 U.S. at 46. However, in the Younger context, "the Court
28 [has] also made clear that in view of the fundamental policy

1 against federal interference with state criminal prosecutions,
2 even irreparable injury is insufficient unless it is 'both great
3 and immediate.'" Id.

4 In Applied Underwriters, the plaintiffs argued that
5 allegations of deprivations of constitutional violations
6 necessarily qualify as an irreparable injury. See Applied
7 Underwriters, 2021 WL 1212674, at *16. The court rejected that
8 argument out of the concern that, if any alleged deprivation of a
9 constitutional right qualified for the exception to Younger, the
10 exception would risk swallowing the rule. See id.; NOPSI, 491
11 U.S. at 365 ("it is clear that the mere assertion of a
12 substantial constitutional challenge to state action will not
13 alone compel the exercise of federal jurisdiction.").

14 This time, CIC II argues that the irreparable injury
15 exception applies because this case involves a conservation,
16 which "confers extraordinary control and discretion on state
17 officials to take over a business and its assets." (Pl.'s Opp'n
18 at 103.) Adopting this argument would, again, risk allowing the
19 irreparable injury exception to swallow the rule: any party
20 against whom the Commissioner institutes a conservation (or
21 affiliate of that party) would be able to immediately initiate a
22 parallel proceeding in federal court challenging the bases for
23 the conservation and seeking to litigate many of the same issues
24 that the state court must resolve. This would, in effect,
25 federalize state conservation proceedings, disrupting
26 California's "system[] for regulating and taxing the business of
27 insurance" in a manner inconsistent with Congress' intent that
28 states remain the primary regulators of insurance absent a clear

1 Congressional statement to the contrary. See United States Dep't
2 of Treasury v. Fabe, 508 U.S. 491, 507 (1993) (noting that, in
3 passing the McCarran-Ferguson Act, 15 U.S.C. § 1011, et seq.,
4 Congress moved to "restore the supremacy of the States in the
5 realm of insurance regulation"); see also Quackenbush, 517 U.S.
6 706, 733 (1996) (Kennedy, J. concurring) ("States, as a matter of
7 tradition and express federal consent, have an important interest
8 in maintaining precise and detailed regulatory schemes for the
9 insurance industry." (citing the McCarran-Ferguson Act)).

10 Finally, plaintiff argues that specific provisions of
11 the proposed rehabilitation plan represent a threat of
12 irreparable injury. But plaintiff offers no authority showing
13 that these provisions represent a "pressing" and "immediate" need
14 for federal intervention, considering that the Superior Court has
15 not yet determined the content of the plan, and plaintiff itself
16 will have an opportunity to shape the terms of the plan by
17 presenting arguments to the Superior Court (and potentially state
18 appellate courts or the United States Supreme Court) that the
19 terms of the plan are not reasonably related to the basis for the
20 conservation or that the proposed terms violate the federal
21 constitution. (See Def.'s RJN, Exs. 5, 8.)

22 This case is distinguishable from cases cited by CIC II
23 in which the irreparable injury exception has been held to apply.
24 See Arevalo v. Hennessy, 882 F.3d 763 (9th Cir. 2018); Bean v.
25 Matteucci, 986 F.3d 1128 (9th Cir. 2021). There, the federal
26 plaintiffs sought federal court intervention on the basis that
27 the state court had unconstitutionally deprived them of their
28 physical liberty by failing to provide adequate process before

1 setting bail, Arevalo, 882 F.3d at 765, and by granting a
2 petition to forcibly administer antipsychotic medication prior to
3 trial, Bean, 986 F.3d at 1135. In both cases, the Ninth Circuit
4 relied on the fact that the federal plaintiffs had exhausted
5 their state court remedies prior to seeking federal intervention,
6 and that the rights cited by the plaintiffs could not be
7 vindicated at trial or after trial. Arevalo, 882 F.3d at 767;
8 Bean, 986 F.3d at 1135. Unlike Arevalo and Bean, this case does
9 not involve an alleged deprivation of physical liberty, and
10 certainly does not involve such a "particularly severe" invasion
11 of liberty as "the forcible injection of antipsychotic drugs."
12 See Bean, 986 F.3d at 1134-35 (noting that antipsychotic drugs
13 "tinker with the mental processes" and thus can "interfere[] with
14 a person's self-autonomy," and can even have "serious, even
15 fatal, side effects").


16 CIC II's claims are also directed entirely at the
17 ongoing state proceeding regarding issues that can be addressed
18 during the state proceeding and, if necessary, in subsequent
19 appeals to state appellate courts or, ultimately, the U.S.
20 Supreme Court. See Applied Underwriters, 2021 WL 1212674, at
21 **12-14; Pagtakhan v. Foulk, 2010 WL 3769282, *1 (N.D. Cal. 2010)
22 (holding that irreparable injury exception to Younger was not
23 applicable because federal plaintiff had not exhausted state
24 court remedies: "Pagtakhan's arguments about the impropriety of
25 medicating him should be made to the San Mateo County Superior
26 Court in opposition to the Sell petition").

27 Accordingly, the court finds that the Younger exception
28 for irreparable injury is not present in this case. Because the

1 court has also concluded that the conservation falls under the
2 NOPSI category for civil enforcement proceedings, that the three
3 Middlesex factors are met, that this action would have the
4 practical effect of enjoining the state court proceeding, and
5 that the bad-faith exception also applies, the court concludes
6 that dismissal under Younger is appropriate. See Younger, 401
7 U.S. at 37.

8 IT IS THEREFORE ORDERED that defendants' Motion to
9 Dismiss (Docket No. 33-1) be, and the same hereby is, GRANTED.

10 Dated: July 6, 2021



11 **WILLIAM B. SHUBB**

12 **UNITED STATES DISTRICT JUDGE**

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